REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ONE NETWORK BANK, INC. (A RURAL BANK), Petitioner,	**CTA Case No. 8725**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 18 2016 1:59 p.m.

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DECISION

UY, J.:

This is a Petition for Review filed by One Network Bank, Inc. (A Rural Bank) against the Commissioner of Internal Revenue, seeking the refund of the amount of ₱61,559,597.83, representing its alleged erroneous payment of gross receipts tax (GRT) for the period covering September to December 2011.

THE FACTS

Petitioner, One Network Bank, Inc. (A Rural Bank), is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[1] It was formed through the consolidation of two (2) constituent rural banks,[2] namely, One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc.[3] Petitioner is registered with the Bureau of Internal

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[1] Exhibits "P-1" and "P-2", Docket, pp. 497 to 512.
[2] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 333.
[3] Exhibit "P-7", Docket, pp. 524 to 560; Exhibit "P-6", Docket, pp. 517 to 523.

Revenue (BIR) as evidenced by its Certificate of Registration No. OCN8RC0000030265, with Tax Identification Number (TIN) 413-177-215-000, with office address at Km. 9, Sasa, Davao City.[4]

On the other hand, respondent, Commissioner of Internal Revenue, is sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including among others, the duty to act on and approve claims for tax refund or tax credit as provided by law.[5]

On July 14, 2011, the Securities and Exchange Commission (SEC) approved petitioner-rural banks' Plan of Consolidation dated August 15, 2009, and its Agreement and Articles of Consolidation and Supplemental to the Agreement and Articles of Consolidation executed on August 24, 2009.[6] On the same date, petitioner's Certificate of Incorporation was also issued by the SEC.[7]

Subsequently, on August 17, 2011, petitioner was issued a Certificate of Authority by the *Bangko Sentral ng Pilipinas* (BSP),[8] authorizing it to operate as a rural bank, pursuant to Republic Act (RA) No. 7353,[9] and to Monetary Board Resolution No. 1210 dated September 2, 2010. Meanwhile, respondent issued Revenue Memorandum Circular (RMC) No. 66-2012[10].

For the period covering September to December 2011, petitioner filed its Monthly Percentage Tax Returns (BIR Form No. 2551M), through the Electronic Filing and Payment System (EFPS) of the Bureau of Internal Revenue (BIR), and paid on May 23, 2013, GRT in the total amount of ₱61,559,597.83, broken down as follows:[11]

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[4] Par. 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 333; Par. 5, Facts, Pre-Trial Order dated April 21, 2014, Docket, p. 351; and Exhibit "P-4", Docket, p. 515.
[5] Par. 1, Summary of Admitted Facts, JSFI, Docket, p. 332; Par. 1, Facts, Pre-Trial Order dated April 21, 2014, Docket, p. 351.
[6] Exhibit "P-5", Docket, p. 516.
[7] Exhibit "P-1", Docket, p. 497.
[8] Exhibit "P-3", Docket, p. 514.
[9] AN ACT PROVIDING FOR THE CREATION, ORGANIZATION AND OPERATION OF RURAL BANKS, AND FOR OTHER PURPOSES, otherwise known as the "Rural Banks Act of 1992".
[10] SUBJECT: Taxation of Rural Banks Formed Through Consolidation.
[11] Exhibits "P-9", "P-9-1", "P-9-2", "P-10", "P-10-1", "P-10-2", "P-11", "P-11-1", "P-11-2", "P-12", "P-12-1", "P-12-2", Docket, pp. 577 to 592.

Month	Basic Tax	Surcharge	Interest	Compromise	Total
September	₱11,725,977.76	₱2,931,494.44	₱3,700,911.34	₱25,000.00	₱18,383,383.54
October	10,581,359.59	2,645,339.90	3,159,912.86	25,000.00	16,411,612.35
November	8,179,566.25	2,044,891.56	2,303,724.41	25,000.00	12,553,182.22
December	9,362,703.55	2,340,675.89	2,483,040.28	25,000.00	14,211,419.72
Total	**₱39,849,607.15**	**₱9,962,401.79**	**₱11,647,588.89**	**₱100,000.00**	**₱61,559,597.83**

On July 31, 2013, petitioner filed an administrative claim for refund dated July 25, 2013 before the BIR Revenue District Office (RDO) No. 123-Cebu City, in the amount of ₱61,559,597.83,[12] purportedly representing its GRT paid for the period covering September to December 2011. Thereafter, on October 9, 2013, petitioner received a letter dated August 14, 2013 from the BIR,[13] denying the said claim for refund.

Consequently, petitioner filed the instant Petition for Review[14] on November 5, 2013 appealing the denial of its claim for refund by respondent.

In the Answer filed on January 6, 2014,[15] respondent alleges the following Special and Affirmative Defenses:

> "4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. Petitioner was formed through consolidation of two constituent rural banks, namely, One Network Rural Bank, Inc., and Rural Bank of New Corella (Davao del Norte), Inc., both of which already availed of the exemption from payment of gross receipts tax for the entire five (5) year period.
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> 6. Constituent rural banks which had already availed the tax exemption are subject to gross receipts tax considering that further exemption through consolidation would be tantamount to granting additional tax exemptions not warranted under Section 15 of Republic Act No. 7353 (RA No. 7353).

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[12] Exhibit "P-8", Docket, pp. 562 to 576; and Exhibit "P-13", Docket, p. 593.
[13] Exhibit "P-15", Docket, p. 593-B.
[14] Docket, pp. 8 to 33.
[15] Docket, pp. 144 to 151.

7. Section 15 of RA No. 7353 is clear and categorical to wit:

   'SEC. 15. All rural banks created and organized under the provisions of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from commencement of operations.

   All rural banks in operations as of the date of approval of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the approval of this Act.'

8. The exemption granted to rural banks under Section 15 of RA No. 7353 is definite, nowhere is it stated that rural banks can avail of consolidation for it to be entitled to another five (5) year exemption. This is clarified under RMC No. 66-2012.

9. RMC No. 66-2012 provides that the tax exemption granted under Section 15 of Republic Act No. 7353 of the Rural Bank Act of 1992 may no longer be availed by consolidated rural banks for the following reasons: (a) the processes of consolidation involve existing and operating rural banks that already cater to the public. For this reason, these processes do not significantly promote the policy enunciated in RA 7353. It merely prolongs the exemption beyond the period prescribed by law, thereby depriving the government of much-needed revenues; and (b) Section 80 of the Corporation Code sets forth the effects of consolidation which includes the following:

   a. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation under this Code;

b. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

c. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporation may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor liens upon the property of any of such constituent corporations shall be impaired by such merger or consolidation.

Hence, rural banks formed through consolidation (consolidated rural banks) of existing rural banks (constituent rural banks) shall not be entitled to the tax exemption under Section 15 of RA 7353 in cases when the constituent rural banks previously availed of this exemption. However, should any or both the constituent rural banks not be able to enjoy the tax exemption for the entire five (5)-year period, then the consolidated rural bank shall be entitled to the exemption for the remaining period.

10. The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters

falling within its exclusive administrative domain. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect **(Español vs. Philippine Veterans Administration, 137 SCRA 314)**.

11. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

12. In **Asturias Sugar Central, Inc. vs. Commissioner of Customs**, it was stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness experience and informed judgment, and the fact that the frequently are the drafters of the law they interpret **(Nestle Philippines vs. Court of Appeals, et al., 203 SCRA 504 citing Abejo, et al. vs. Hon. Dela Cruz, etc., et al., 149 SCRA 654); Asturias Sugar Central, Inc. vs. Commissioner of Customs, 29 SCRA 617; Ramos vs. Court of Industrial Relations, 21 SCRA 218 and Santiago vs. Deputy Executive Secretary, 192 SCRA 199)**.

13. Thus, as the government agency charged with the enforcement of tax laws, the interpretation made by the Commissioner of Internal Revenue should be given great weight by this Honourable Court.

14. The BIR, as the administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions

of the Tax Code of 1997. The growth of society has ramified the government's activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems in present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them **(Eastern Shipping Lines, Inc. vs. POEA, et al., 166 SCRA 533)**.

15. Notably, Section 244, in relation to Section 4, of the Tax Code of 1997 states:

> Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.--- The Secretary of Finance, upon recommendation of the Commission, shall promulgate all needful rules and regulations for the effective enforcement of the provision of this code.
>
> Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.--- The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

16. Assuming *arguendo* that the BIR exercised administrative legislation, the same is not illegal *per se.* Administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress. In fact, **the latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception.** The reason is the increasing complexity of modern life and many technical fields of governmental functions as in matters pertaining to tax exemptions. This is coupled by the growing inability of the legislature to cope directly with the many problems demanding its attention. The growth of society has ramified its activities and created peculiar and

> sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present day undertakings, the legislature may not have the competence, let alone the interest and the time, to provide the required direct and efficacious, not to say specific solutions *(pp. 82-83, Philippine Political Law, 1989 ed., Justice Isagani A. Cruz).*

17. Furthermore, in its Petition for Review petitioner seeks refund by casting invalidity on RMC No. 66-2012 on the ground that said issuance is contrary to the provisions of R.A. 7353. This is apparently a collateral attack on the duly issued administrative issuance which is not allowed by law.

18. In **Dasmarinas Water District vs. Monteray Foods Corporation**, GR. No. 175550, the Honourable Supreme Court held:

> 'We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.'

19. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames.

20. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue,**

280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).

21. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

22. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

After the Pre-trial Conference held on February 28, 2014, the parties filed their Joint Stipulation of Facts and Issues (JSFI) on March 12, 2014.[16] In the Resolution dated March 18, 2014, the Court approved the said JSFI and terminated Pre-Trial[17] and a Pre-Trial Order dated April 21, 2014 was issued[18].

During trial, petitioner presented Atty. Bambeth Mahal J. Diez – petitioner's Corporate Secretary[19] and Edwin M. Gupid – its Accounting Department Head.[20] On the other hand, respondent presented Marie Bernadette A. Dy, Revenue Officer of the Assessment Section of the Large Taxpayers Division – Cebu City,[21] as her sole witness.

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[16] Docket, pp. 332 to 336.
[17] Docket, p. 339.
[18] Docket, pp. 350 to 357.
[19] Minutes of the Hearing dated May 6, 2014, Docket, pp. 357-A to 357-D.
[20] Minutes of the Hearing, Docket, pp. 453 to 454.
[21] Minutes of the Hearing dated November 4, 2014, Docket, pp. 715 to 718.

As directed by the Court, petitioner filed its Memorandum on May 19, 2015,[22] while respondent filed her Memorandum on May 25, 2015.[23] Thus, this case was submitted for decision on May 28, 2015.[24]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[25] for this Court's resolution, to wit:

"**Main Issue:**

A. Whether or not Petitioner is entitled to refund in the total amount of Sixty-One Million Five Hundred Fifty-Nine Thousand Five Hundred Ninety-Seven Pesos and 83/100 (₱61,559,597.83), allegedly representing Petitioner's overpayment of GRT for the period September to December 2011.

Sub-Issues:

B. Whether or not RMC 66-2012 is in accord with the provisions of Republic Act (RA) No. 7353, or the Rural Bank Act of 1992.

C. Whether or not the issuance of RMC 66-2012 is an encroachment of a legislative power and an exercise of an administrative legislation.

D. Assuming RMC 66-2012 is valid and binding, whether or not it must be applied prospectively based on equitable estoppel."

Petitioner's arguments:

Petitioner primarily argues that this Court has jurisdiction to rule on the validity of RMC No. 66-2012.

[22] Docket, pp. 753 to 781.
[23] Docket, pp. 786 to 796.
[24] Resolution dated May 28, 2015, Docket, p. 799.
[25] Statement of the Issues, JSFI, Docket, p. 333; and Issues, Pre-Trial Order dated April 21, 2014, Docket, pp. 351 to 352.

According to petitioner, being a consolidated rural bank, it is entitled to the tax exemption privilege under Section 15 of RA No. 7353 or the Rural Bank Act. Allegedly, the wording of Section 15 of RA No. 7353, clearly and unequivocally grants tax exemption to "all rural banks" without any distinction as to how they were formed or created.

Furthermore, petitioner stresses that RMC No. 66-2012 is contrary to the intent of the law to promote comprehensive agrarian reform and rural development; and that said BIR issuance misinterpreted and misapplied Section 80 of the Corporation Code as a legal basis to exclude consolidated rural banks from the tax exemption under RA No. 7353.

Lastly, petitioner submits that assuming that RMC No. 66-2012 is valid, the same should not be retroactively applied to petitioner for the period September to December 2011.

Respondent's counter-arguments:

Respondent, on the other hand, argues that constituent rural banks, which had already availed of the tax exemption, are subject to GRT, considering that further exemption through consolidation would be tantamount to granting additional tax exemptions not warranted under RA No. 7353. She contends that the exemption granted to rural banks under Section 15 of RA No. 7353 is definite and nowhere is it stated that rural banks can avail of consolidation for it to be entitled to another five-year exemption.

According to respondent, consolidated rural banks of existing rural banks shall not be entitled to the tax exemption under Section 15 of RA No. 7353 in cases where the constituent rural banks had previously availed of such, but if any or both the constituent rural banks are not able to enjoy the exemption for the entire five-year period, the consolidated bank shall be entitled to the exemption for the remaining period.

Furthermore, respondent asserts that the BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain, and that administrative regulations enacted to interpret the law have the force of law and are entitled to great respect. She also contends that assuming *arguendo* that the BIR exercised administrative legislation, the same is not illegal *per se*, as administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress.

Moreover, respondent points out that petitioner seeks refund by casting invalidity on RMC No. 66-2012 on the ground that said issuance is contrary to the provisions of RA No. 7353. On this score, respondent argues that such is apparently a collateral attack on the duly issued administrative issuance, and is thus not allowed by law.

Finally, respondent states that claims for refund are strictly construed against the claimant for the same partake the nature of exemption from taxation and are looked upon with disfavor.

THE COURT'S RULING

Primarily assailed in the instant Petition for Review is the validity of RMC No. 66-2012 for allegedly failing to conform to the law it seeks to implement, RA No. 7353.

Revenue Memorandum Circular No. 66-2012 is not contrary to Republic Act No. 7353.

The subject of RMC No. 66-2012 is "Taxation of Rural Banks Formed Through Consolidation". Relative thereto, it provides as follows:

> "II. TAXATION OF RURAL BANKS FORMED THROUGH CONSOLIDATION.
>
> Rural banks formed through consolidation ('consolidated rural banks') of existing rural banks ('constituent rural banks') shall not be entitled to the tax exemption under Section 15 of Republic Act No. 7353 in cases when the constituent rural banks previously availed of this exemption. However, should any or both the constituent rural banks not be able to enjoy the tax exemption for the entire five (5)-year period, then the consolidated rural bank shall be entitled to the exemption for the remaining period."

At the outset, considering that Section 15 of RA No. 7353 involves the grant of tax exemption, the governing principle is that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority – he who claims an exemption must be able to justify his claim by the clearest grant of statute. A person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.[26]

Moreover, it must be remembered that administrative issuances (such as RMC No. 66-2012) have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations.[27]

Be that as it may, RMCs must not override, supplant, or modify the law, but must remain consistent and in harmony with, the law they seek to apply and implement.[28] An examination, therefore, of the pertinent laws is warranted.

Section 15 of RA No. 7353 or the Rural Banks Act of 1992 reads as follows:

> "SEC. 15. All rural banks created and organized under the provisions of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the date of commencement of operations.
>
> All rural banks in operation as of the date of approval of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the approval of this Act."

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[26] *Digital Telecommunications Philippines, Inc. vs. City of Government of Batangas, et al.*, G.R. No. 156040, December 11, 2008.

[27] *Chevron Philippines, Inc. vs. Bases Conversion Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

[28] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc. et al.*, G.R. No.183505, February 26, 2010.

Based on the foregoing, it is clear that rural banks are exempt from the payment of all taxes, fees and charges of whatever nature and description, subject to the following limitations, to wit:

1) The tax exemption does not cover corporate income tax, local taxes, fees and charges;

2) The concerned rural banks must be created and organized under the provisions of RA No. 7353; and

3) The tax exemption is only for a limited period of time, *i.e.*, for a period of five (5) years, either from the date of commencement of operation, or from the approval of RA No. 7353, if the rural bank is existing as of the approval thereof, as the case may be.

Thus, it is without question that RA No. 7353 grants tax exemptions to rural banks. The crux of the issue, as petitioner puts it, is whether respondent's application of Section 80 of the Corporation Code over consolidated rural banks vis-à-vis the grant of tax exemption to said banks under RA No. 7353, is correct. Particularly, petitioner imputes error on respondent's interpretation and application of the above-stated second and third limitations for the grant of tax exemption under Section 15 of RA No. 7353.

RMC No. 66-2012 states the background for the issuance thereof, as follows:

> "It has been observed, however, that certain existing rural banks, after having fully enjoyed the tax exemption under RA 7353, are able to extend their period of tax exemption beyond the prescribed five (5)-year period through the process of *consolidation*. As defined, consolidation refers to *'the union of two or more existing corporations to form a new corporation called the consolidated corporation. It is a combination by agreement between two or more corporations by which their rights, franchises, and property are united and become those of a single, new corporation, composed of generally, although not necessarily, of the stockholders of the original corporations.'*
>
> In this case, certain rural banks already in existence and have previously availed of the tax incentives under RA 7353 consolidate themselves into single rural banks.

Relying on Section 15 of RA 7353, these rural banks established through *consolidation* ('consolidated rural banks') avail of another five (5) years to be exempt from payment of internal revenue taxes, such as gross receipts tax (GRT).

However, the tax exemption may no longer be availed by consolidated rural banks for the following reasons:

First, the processes of *consolidation* involve existing and operating rural banks that already cater to the public. For this reason, these processes do not significantly promote the policy enunciated in RA 7353. It merely prolongs the exemption beyond the period prescribed by law, thereby depriving the government of much-need revenues.

Second, Section 80 of the Corporation Code sets forth the effects of *consolidation* which includes the following:

1. The surviving or **<u>the consolidated corporation shall possess all the rights, privileges, immunities</u>** and powers and shall be subject to all the duties and liabilities of a corporation under this Code;

2. The surviving or **<u>the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations</u>**; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

3. The surviving or **<u>consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself</u>**

> **<u>incurred such liabilities or obligations</u>**; and any pending claim, action or proceeding brought by or against any of such constituent corporation may be prosecuted by or against the surviving or consolidated corporations, as the case may be. Neither the rights of creditors nor liens upon the property of any of such constituent corporations shall be impaired by such merger or consolidation. (Emphasis supplied)"

A cursory reading of the foregoing disquisition would reveal that respondent simply adhered to the well-settled rule that tax exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority.

Moreover, We see no irregularity in the application of Section 80 of the Corporation Code by respondent.

It must be noted that the second limitation for the grant of tax exemption under Section 15 of RA No. 7353 is that the concerned rural banks must be created and organized under the provisions thereof. Relative thereto, it is plain that rural banks organized under RA 7353 are essentially stock corporations, in accordance with Section 4 thereof, to wit:

> "SEC. 4. No rural bank shall be operated without a Certificate of Authority from the Monetary Board of the Central Bank. **Rural banks shall be organized in the form of stock corporations.** xxx." *(Emphasis supplied)*

As a corollary, since rural banks are stock corporations, the application of Section 80 of the Corporation Code is called for, pursuant to Section 4 thereof, which provides as follows:

> "SEC. 4. *Corporations created by special laws or charters.* — Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, **<u>supplemented by the provisions of this Code, insofar as they are applicable</u>**." *(Emphasis and underscoring supplied)*

Clearly, the effects or consequences of the consolidation of two or more stock corporations must likewise be governed by Section 80 of the Corporation Code, since RA 7353 did not provide for the same.

Nevertheless, petitioner argues that the application of Section 80 of the Corporation Code, as a legal basis to justify the BIR's exclusion, is flawed and erroneous on two levels, to wit:

1. *First*, the BIR modestly and coarsely interpreted the phrase "rights, privileges, immunities, and franchises" in the said Section 80 to include tax exemptions, notwithstanding the well-settled doctrine that tax-exemption are personal and non-transferable; and

2. *Second*, the BIR failed to fully appreciate the differing effects of merger and consolidation on the continued tax-exempt status of an entity. In consolidation, the constituent corporations cease to exist and a new corporation is entitled to benefit from the tax exemption while, in a merger, one of the constituent corporations survive and continues the combined business and, as such, the tax exempt status is continued.

To support its arguments, petitioner invokes decisions of the US Supreme Court[29]. However, the Court finds the grounds raised by petitioner specious.

We do not subscribe to petitioner's invocation of the said US Supreme Court decisions. While these foreign authorities may have persuasive influence on the Court's analysis,[30] there is no indication that the ruling or interpretation by the said court involved similar provisions of the pertinent laws involved in the instant case, and that said decisions involve the same factual milieu. Thus, the same cannot be used as reference in the instant case.

Specifically, this Court does not agree that tax exemptions are not included in the phrase "rights, privileges, immunities" as used in Section 80 of the Corporation Code. Without doubt, a tax exemption is considered by Philippine jurisprudence as a right, a privilege, or an

[29] Morgan vs. Louisiana, 93 U.S. 217 (1876); Covington & Turnpike Road Co. et. al vs. Sandford et. al, 164 U.S. 578 (1876); Evansville, H. & N. R. Co. vs. Com., 173 A.L.R. 15 (1948); Com. vs. Masonic Temple Co., 10 Ky. L. Rptr. 325, 87 Ky. 349, 8 S.W. 699, 701 (1888); Central Railroad & Banking Co vs. Georgia, 92 U.S. 665; Branch vs. City of Charlestone, 92 U.S. 677

[30] Refer to *Ang Ladlad LGBT Party vs. Commission on Elections*, G.R. No. 190582, April 8, 2010.

immunity, to wit:

> "It has been held that exemptions are never presumed, the burden is on the claimant to establish clearly his **right to exemption** and cannot be made out of inference or implications but must be laid beyond reasonable double."[31]

> "An exemption is **an immunity or a privilege**; it is the freedom from a charge or burden to which others are subjected."[32]

Section 80 of the Corporation Code does not make any distinction as to which is included in the phrase "rights, privileges, immunities". Thus, the applicability of the legal maxim that *"when the law does not distinguish, neither should the court"* in this case.[33]

Moreover, this Court does not agree with petitioner's proposition that there are differing effects of merger and consolidation on the tax-exempt status of an entity.

While it recognizes that in consolidation, a *"new"* corporation is formed, it is the Court's considered view that it is not entitled anew to the tax exemption privileges previously and fully enjoyed by the constituent corporations under Section 15 of RA No. 7353, where it provided a period of limitation for such tax exemption. This is because the rights (such as a tax exemption) and obligations (such as tax liabilities) of the constituent corporations merely extend to the consolidated corporation, in the same way as that of a surviving corporation (as an effect of merger), by virtue of the said Section 80 of the Corporation Code.

Thus, once the tax exemption under Section 15 of RA No. 7353 has already been fully enjoyed by the constituent corporations, it can no longer be extended to the surviving or consolidated corporation, as the case may be. To interpret otherwise would run counter to the constitutional provision that "[t]*he rule of taxation shall be uniform and equitable.*"[34]

[31] *Quezon City, et al. vs. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.
[32] *Smart Communications, Inc. vs. City of Davao, et al.*, G.R. No. 155491, September 16, 2008.
[33] *Cruz, et al. vs. Commission on Audit*, G.R. No. 134740, October 23, 2001.
[34] Section 28(1), Article VI of the 1987 Constitution.

Uniformity requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities.[35] To rule that the consolidated rural bank via the process of consolidation enjoys another fresh period of five (5) years the tax exemption under Section 15 of RA No. 7353, while the surviving rural bank through the process of merger merely continues its tax exemption under the same law, is clearly violative of such principle of uniformity.

Thus, this Court finds that RMC No. 66-2012 is in accord with the law, and the issuance thereof cannot be treated as an encroachment of legislative power.

The rule on non-retroactivity of rulings under Section 246 of the NIRC of 1997 applies only in cases where there is a revocation, modification or reversal of any rules and regulations, rulings, or circulars.

Petitioner further argues that assuming arguendo that RMC No. 66-2012 is valid, the then prevailing general interpretative rule prior to the RMC's issuance misled the petitioner to believe that it is exempt from GRT under Section 15 of RA No. 7353. According to petitioner, from the issuance of Revenue Regulations (RR) No. 16-93, which was relied upon by taxpayers in good faith, until its reversal by RMC No. 66-2012, the entitlement of consolidated rural banks to the exemption pursuant to Section 15 of RA No. 7353 may have to be recognized as valid. Relative thereto, petitioner invokes Section 246 of the NIRC of 1997, to wit:

> "SEC. 246. *Non-Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or

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[35] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 119761, August 29, 1996.

omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith."

We do not agree.

Petitioner proceeds from the wrong assumption that RMC No. 66-2012 can validly revoke, modify, or reverse RR No. 16-93. This is error on the part of petitioner. RRs are not in equal footing with RMCs.

While both RRs and RMCs have the force and effect of laws and are entitled to great weight,[36] the former has superiority over the latter. This is so because RRs are promulgated by the Secretary of Finance, who is the head of the Department of Finance,[37] pursuant to Section 244 of the NIRC of 1997, to wit:

> "SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.*— **The Secretary of Finance**, upon recommendation of the Commissioner, **shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.**" *(Emphasis supplied)*

On the other hand, RMCs are merely considered administrative *rulings* which are issued from time to time by the Commissioner of Internal Revenue,[38] who is the chief of the BIR.[39] The function of RMCs is to *"disseminate and embody pertinent and applicable portions, **as well as amplifications of the rules**, precedents, laws, **regulations**, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by*

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[36] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[37] Refer to Section 6, Chapter 2, Book IV, in relation to Section 5, Chapter 2, Title II, Book IV, both of Executive Order No. 292, Series of 1987, otherwise known as the "Administrative Code of 1987".

[38] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.

[39] Section 3, NIRC of 1997.

offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[40]

In fact, while the power to interpret the provisions of the NIRC and other tax laws is under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, the same is subject to review by the Secretary of Finance.[41]

In this connection, it must be emphasized that the BIR is under the supervision and control of the Department of Finance.[42] Moreover, the power of control means the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.[43] Thus, the Department of Finance, as headed by the Secretary of Finance, may revise or reverse the acts of the BIR, as lead by the Commissioner of Internal Revenue. However, it cannot be the other way around or *vice versa*. Simply put, a subordinate cannot overrule a superior's act.

But even granting that respondent, as Commissioner of Internal Revenue, through the issuance of a RMC, can revoke, modify, or reverse, RRs issued by the Secretary of Finance, We do not agree, that RMC No. 66-2012 overruled any of the provisions of RR No. 16-93. This must be so because RMC No. 66-2012 is not inconsistent with RR No. 16-93. In fact, the said issuance may be reconciled.

As a rule, repeal by implication is frowned upon, unless there is clear showing that the later statute is so irreconcilably inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand together.[44] There is nothing in RMC No. 66-2012 that is inconsistent and incapable of reconciliation with RR No. 16-93.

Section 7 of RR No. 16-93 provides as follows:

> "SEC. 7. *Period of Exemption.* — All rural banks created and organized under the provisions of the Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except corporate income imposed under Title II of the NIRC and

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[40] Section 3(g), Revenue Administrative Order No. 01-03. *(Emphases supplied)*
[41] Section 4, NIRC of 1997.
[42] Section 2, NIRC of 1997.
[43] *Liban, et al. vs. Gordon*, G.R. No. 175352, July 15, 2009
[44] *PCI Leasing and Finance, Inc. vs. UCPB General Insurance Co., Inc.*, G.R. No. 162267, July 4, 2008.

> as specified in Section 2 (A) of these regulations for a period of five (5) years from the date of commencement of operations; while for rural banks which are already existing and operating as of the date of approval of the Act (April 2, 1992), the tax exemption shall be for a period of five (5) years reckoned from the date of such approval.
>
> For purposes of these regulations, 'date of commencement of operations' shall be understood to mean the date when the rural bank was registered with the Securities and Exchange Commission, (*)
>
> However, R.A. 7353 although approved on April 2, 1992, was published in the Official Gazette on May 25, 1992; hence, said Act took effect only after fifteen (15) days following its publication or on June 9, 1992, pursuant to Article 2 of the New Civil Code of the Philippines and in line with the Supreme Court decision in the case of Tañada, et al. vs. Tuvera, 146 SCRA 446."

On the other hand, the ruling in RMC No. 66-2012 reads:

> "Rural banks formed through consolidation ('consolidated rural banks') of existing rural banks ('constituent rural banks') shall not be entitled to the tax exemption under Section 15 of Republic Act No. 7353 in cases when the constituent rural banks previously availed of this exemption. However, should any or both the constituent rural banks not be able to enjoy the tax exemption for the entire five (5)-year period, then the consolidated rural bank shall be entitled to the exemption for the remaining period."

The foregoing provisions may simply be reconciled as follows: (1) Section 7 of RR No. 16-93 may refer merely to rural banks which are newly incorporated, *i.e.*, those which were brought about not as a result of merger or consolidation; and (2) RMC No. 66-2012 covers those rural banks which have been merged or consolidated with other rural banks.

Finally, petitioner cannot invoke BIR Ruling Nos. [DA-420-04], [DA-(C-177)352-09], [DA-084-06], and [DA-692-07], wherein the BIR ruled in favor of particular consolidated rural banks that they are entitled to exemption from the GRT under Section 15 of RA No. 7353.

Not being the taxpayer who, in the first instance, sought a ruling from the Commissioner of Internal Revenue, petitioner cannot invoke the foregoing principle on non-retroactivity of BIR rulings.[45] Since the specific ruling in the said BIR rulings is applicable only to said particular taxpayers,[46] *i.e.*, who sought the said ruling, there can be no merit in the assertion of petitioner that it was misled to believe that it is exempt from the GRT under Section 15 of RA No. 7353 vis-à-vis RR No. 16-93. Conversely, the said BIR rulings cannot be treated as general interpretative rules because it was a response to a query made by particular taxpayers.[47]

All told, We cannot apply the rule against retroactivity under Section 246 of the NIRC in the case of petitioner.

Petitioner is not entitled to its claim for refund.

Petitioner failed to present any evidence to show that its constituent corporations, *i.e.*, One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc., have not fully availed of the five-year tax exemption granted under Section 15 of RA No. 7353, as of the period of the refund claim, *i.e.*, from September to December 2011. Thus, this Court has no way of knowing whether petitioner is entitled to the said claim.

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims.[48] Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[49] Correspondingly, petitioner's claim for refund allegedly representing payments of GRT in the amount of ₱61,559,597.83 must be denied.

WHEREFORE, in light of all the foregoing considerations, the instant Petition for Review filed by One Network Bank, Inc. (A Rural Bank) is **DENIED** for lack of merit.

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[45] *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011.
[46] Refer to *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*, G.R. Nos. 187485, 195113, and 197156, February 12, 2013.
[47] *Id.*
[48] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[49] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice